

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FALLIEN COSMECEUTICALS LTD.,

Plaintiff,

vs.

COOLA LLC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fallien Cosmeceuticals Ltd. (“Fallien” or “Plaintiff”), by and through the undersigned counsel, hereby brings its Complaint for Patent Infringement against Defendant Coola LLC (“Coola” or “Defendant”).

NATURE OF THE ACTION

1. This is an action for patent infringement. Fallien alleges that Coola infringes the following Fallien Patents, collectively referred to as the Asserted Patents:

- U.S. Patent No. 10,154,946 (“the ’946 Patent”), attached hereto as **Exhibit A**;
- U.S. Patent No. 10,588,832 (“the ’832 Patent”), attached hereto as **Exhibit B**; and

2. Fallien alleges that Coola infringes the Asserted Patents by making, using, offering for sale, selling, and/or importing the Bare Republic Mineral Whipped Mousse sunscreen (hereinafter the “Accused Product”). **Exhibit C**. Fallien seeks damages, injunctive, and other relief for infringement of the Asserted Patents.

THE PARTIES

3. Plaintiff Fallien is a Delaware corporation with a principal place of business at

2541 General Armistead Avenue, Norristown, PA 19403.

4. Upon information and belief, Defendant Coola is a Delaware limited liability company with a principal place of business at 3200 Lionshead Avenue, Suite 100, Carlsbad, CA 92010 and a registered agent for service of process at 1209 Orange Street, Wilmington, DE 19801 (The Corporation Trust Company).

JURISDICTION AND VENUE

5. This action for patent infringement arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et. seq.* This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Coola because it is a resident of Delaware.

7. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b) because Coola is organized under the laws of Delaware and has a registered agent for service of process at 1209 Orange Street, Wilmington, DE 19801 (The Corporation Trust Company).

BACKGROUND

A. Fallien

8. Fallien was founded in 1989 by Dr. Harry Fallick, and a pharmaceutical dermatologic chemist, as a company that develops safer, healthier inorganic sunscreen products.

9. Dr. Fallick founded Fallien while a practicing plastic surgeon. In his reconstructive facial plastic surgical practice, Dr. Fallick recognized that ultraviolet related diseases can have devastating impact on human lives, leaving skin vulnerable to UV radiation induced damage and skin cancer. Dr. Fallick founded Fallien to develop safer sunscreen products. The goal has always been to create healthier sunscreens by reducing the use of

chemical sunscreen filters, specifically avoiding the use of these small molecular weight sunscreen filters that can easily penetrate into the bloodstream. Fallien maintains two distinct lines of distributed sun care products—the TiZO® brand of skincare and the CoTZ® line of sunscreens.

10. The TiZO® brand of skincare is both retailed by and recommended by licensed professionals such as medical doctors, plastic surgeons, dermatologists, and aestheticians. The CoTZ® sunscreens are considered more consumer-friendly products found in cosmetics stores, such as ULTA®. Both the TiZO® and CoTZ® brands offer only 100% mineral-based sunscreens that include Titanium Dioxide and/or Zinc Oxide, which are FDA-approved inorganic category 1 sunscreen filters. These inorganic physical particles function by reflecting harmful UVA-UVB rays away from the skin, rather than absorbing them, as do the chemical sunscreens. They also do not penetrate into the bloodstream, are gentle and non-irritating, and are not photosensitizing nor do they react or break down in sunlight.



11. The TiZO® Sheerfoam™, shown above, is a mineral sunscreen mousse that offers sheer, weightless protection while providing superb photo-protective performance. This light, foaming sunscreen dries virtually invisible on any complexion. The TiZO® Sheerfoam™ is marked by the '946 Patent. No risk of inhalation exists as is true with other propellant based suncare products.

12. The CoTZ® Silky Foam, shown right, is a virtually weightless tinted mineral sunscreen in a silky soft, easy to apply foam that blends



translucent on skin.

B. Coola

13. According to its website, Coola sells a variety of sun care products including sunscreens, tanning products, lip care products, after sun products, and hair products.

14. Upon information and belief, Bare Republic is Coola's DBA, under which it sells the Accused Product to various retailers.

15. In 2019, S.C. Johnson acquired Coola. *See Exhibit D.*

C. Fallien notifies Coola of infringement concerns in April 2020.

16. On April 24, 2020, Dr. Fallick emailed Steve Bromberg, the RD&E Director of S.C. Johnson, the parent company of Coola, regarding Fallien's patent portfolio, including the Asserted Patents. Mr. Bromberg confirmed in a later email that he had shared the patent portfolio internally with the Sun Care department. **Exhibit E.**

COUNT 1: INFRINGEMENT OF THE '946 PATENT

17. The allegations of paragraphs 1-16 of this Complaint are incorporated by reference as though fully set forth herein.

18. Fallien owns by assignment the entire right, title, and interest in the '946 Patent.

19. The '946 Patent was duly and legally issued by the United States Patent and Trademark Office on December 18, 2018 and is entitled "Foamable Sunscreen Formulation." A true and correct copy of the '946 Patent is attached hereto as **Exhibit A.**

20. The '946 Patent is valid and enforceable under the laws of the United States.

21. Upon information and belief, Coola has directly infringed and is directly infringing at least claims 1, 3, 5, 11, and 15 of the '946 Patent in violation of 35 U.S.C. § 271 *et seq.*, by making, offering for sale, and/or selling in the United States without authority the

Accused Product. For example, as show in **Exhibit F**, the Accused Product meets every element of claim 1 of the '946 Patent.

22. Coola's infringement of the '946 Patent has been and continues to be willful and deliberate. Upon information and belief, Coola has been on notice of the '946 Patent since at least April 24, 2020, when Fallien notified S.C. Johnson, the parent company of Coola, of the Asserted Patents. However, upon information and belief, Coola continues to manufacture, sell, and offer to sell, the Accused Product, despite a known or obvious risk of infringement of the '946 Patent.

23. As a result of Coola's acts of infringement, Fallien has suffered and will continue to suffer damages in an amount to be proved at trial.

COUNT 2: INFRINGEMENT OF THE '832 PATENT

24. The allegations of paragraphs 1-23 of this Complaint are incorporated by reference as though fully set forth herein.

25. Fallien owns by assignment the entire right, title, and interest in the '832 Patent.

26. The '832 Patent was duly and legally issued by the United States Patent and Trademark Office on March 17, 2020 and is entitled "Foamable Sunscreen Formulation." A true and correct copy of the '832 Patent is attached hereto as **Exhibit B**.

27. The '832 Patent is valid and enforceable under the laws of the United States.

28. Upon information and belief, Coola has directly infringed and is directly infringing at least claims 10, 14, 21, and 22-25 of the '832 Patent in violation of 35 U.S.C. § 271 *et seq.*, by making, offering for sale, and/or selling in the United States without authority the Accused Product. For example, as shown in **Exhibit G**, the Accused Product meets every element of claim 10 of the '832 Patent.

29. Coola's infringement of the '832 Patent has been and continues to be willful and deliberate. Upon information and belief, Coola has been on notice of the '946 Patent since at least April 24, 2020, when Fallien notified S.C. Johnson, the parent company of Coola, of the Asserted Patents. However, upon information and belief, Coola continues to manufacture, sell, and offer to sell, the Accused Product, despite a known or obvious risk of infringement of the '832 Patent.

30. As a result of Coola's acts of infringement, Fallien has suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Fallien prays for the following relief:

- A. A judgment that Coola has infringed the '946 Patent;
- B. An order enjoining Coola, its officers, agents, employees, and those persons in active concert or participation with any of them, and Coola's successors and assigns, from continuing to infringe the '946 Patent;
- C. A judgment that Coola has infringed the '832 Patent;
- D. An order enjoining Coola, its officers, agents, employees, and those persons in active concert or participation with any of them, and Coola's successors and assigns, from continuing to infringe the '832 Patent;
- E. An order awarding Coola its damages pursuant to 35 U.S.C. § 284;
- F. An order finding that Coola's infringement has been willful and increasing the damages awarded to Fallien to three times the amount assessed pursuant to 35 U.S.C. § 284;
- G. An order finding that this case is exceptional within the meaning of 35 U.S.C. §

285 and awarding Fallien its attorneys' fees;

H. An order awarding Fallien prejudgment and post-judgment interest on its damages;

I. An order awarding Fallien its costs;

J. An order awarding Fallien any other and further relief as the Court deems proper.

Dated: October 29, 2020

Respectfully submitted,

BLANK ROME LLP

/s/ Adam V. Orlacchio

Adam V. Orlacchio (No. 5520)
Brandon W. McCune (No. 6563)
1201 N. Market Street, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464
Orlacchio@BlankRome.com
BMcCune@BlankRome.com

OF COUNSEL

Jason Snyderman
(*pro hac vice* forthcoming)
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Telephone: (215) 569-5774
Facsimile: (215) 569-5555
Snyderman@BlankRome.com

Domingo M. LLagostera
(*pro hac vice* forthcoming)
717 Texas Avenue, Suite 1400
Houston, TX 77002
Telephone: (713) 632-8682
Facsimile: (713) 228-6605
DLLagostera@BlankRome.com

**Attorneys for Plaintiff Fallien
Cosmeceuticals Ltd.**